

No. 76-347

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

ROBERT H. PATTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that his conviction is void for lack of evidence of fraudulent intent.

Following a jury trial in the United States District Court for the Eastern District of North Carolina, petitioner was convicted of fraudulently concealing or removing property pledged to a production credit association, in violation of 18 U.S.C. 658. He was sentenced to three years' imprisonment and fined \$3,000. Execution of the sentence was suspended, and petitioner was placed on probation for three years. The court of appeals affirmed in a thorough opinion on which we rely (Pet. App.).

Relying upon *Thompson v. City of Louisville*, 362 U.S. 199, 204, petitioner contends (Pet. 4-8) that the record in this case is so "entirely lacking in evidence to support" a finding of fraudulent intent that his conviction violated due process of law.

The government's proof at trial is recounted in detail in the opinion of the court of appeals (Pet. App. 15-17), and we see no purpose to be served in repeating it. Viewed in the light most favorable to the government (*Glasser v. United States*, 315 U.S. 60, 80), this evidence was clearly sufficient to support the jury's finding that petitioner removed and concealed 138 head of cattle with intent to defraud the Dunn Production Credit Association, which held a security interest in the livestock. As the court of appeals observed (Pet. App 17-18):

[Petitioner] argues that the evidence was insufficient to show an intent to defraud. We find, however, that it was uncontroverted that [petitioner] not only failed to repay the loans secured by the cattle, but also removed the cattle without giving any notice to the credit association that he was doing so. Although [petitioner] now argues that his November 1973 letter could be construed to indicate an intention on his part that all the pledged cattle would eventually be moved to Kentucky, there was no offer of evidence at trial to support such an interpretation. To the contrary, the evidence showed that the only contact [petitioner] had with the credit association, either at the time the cattle were moved or thereafter, indicated that the cattle would be moved to another county in North Carolina, not across state lines into Kentucky. The jury clearly could infer from such a communication that [petitioner's] conduct was calculated to mislead and deceive his creditor. Under these circumstances, we hold that the evidence introduced by the prosecution was sufficient to sustain a *prima facie* case of intent to defraud and, since the evidence was unrebutted, it was sufficient to permit the jury to find [petitioner] guilty beyond a reasonable doubt.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.